IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4855 OF 2005

M/s.Swarupshree Yarn Pvt. Ltd.).. Petitioner

Versus

Shri Mukund Kanayalal Patel).. Respondent

Mr.P.K.Dhakephalkar i/b.Mr.Niranjan Shimpi for the Petitioner.

Mr.S.M.Sabrad for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 26TH JULY 2005

P.C.:

. This Petition is directed against the order dated 22nd February 2005 disallowing the application filed by the Petitioner's Advocate for setting aside the order passed on 13th January 2005. The trial Court on 13th January 2005 closed the evidence of the Plaintiff since both Plaintiff and his Advocate were absent. Immediately within an hour of this order being passed, the Plaintiff's Advocate made an application for setting aside the order. The application was heard and by an order dated 22nd February 2005 the trial Court refused to set aside the earlier order. The reasons for refusal were that the Advocate who had filed the Vakalatnama on behalf of the Plaintiff had not made the application and further that there was no progress in evidence from 11th

June 2004 to o 30th January 2005.

2. Perusal of the dates referred to in the impugned order will show that the delay from 11th June 2004 to 13th January 2005 is not solely because of the Plaintiff’s absence. In such circumstances, the trial Court ought to have considered setting aside of the order by imposing some costs.

3. Heard Advocates. The order of the trial Court dated 22nd February 2005 is set aside on payment of costs of Rs.2,000/- (Rupees Two Thousand) to the Respondents.

4. I am informed that the matter is posted for evidence on 8th August 2005. The trial Court will continue with the evidence of PW1. In the event the witness for the Plaintiff does not turn up for recording his evidence on 8th August 2005 without any reasonable cause, the trial Court to proceed with the matter by recording the evidence of the Defendant.

5. Writ Petition disposed of accordingly.